IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1023 OF 2005

Adinath Nagari Sahakari Patsanstha
Maryadit, Sangli ...Applicant

vs.

Radhabai Kondiba Suryavanshi and another ...Respondents

Mr.S.S.Patwardhan for the Applicant
Mr.Umesh Mankapure for Respondent Nos.1 and 2
Mr.S.V.More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 16,2006.

ORAL JUDGMENT:

1. Notice for final disposal was issued by order dated 22nd February 2005. Leave is granted. Appeal is admitted. The learned Advocate for Respondent Nos.1 and 2 waives service. The Applicant is the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. By order dated 25th November 2004 passed under section 256 of the Code of Criminal Procedure, 1973, the learned Judicial Magistrate First Class dismissed the the complaint as the complainant and the Advocate for the complainant were absent.

2. Shri Patwardhan learned Counsel for the Applicant submitted that the order gives an impression that the complainant was consistently absent. He states that the Roznama of the proceedings shows that in the year 2004, except on 25th October 2004, the complainant/Applicant was present. He states that only in the year 2002-2003 the Applicant was absent on few dates. He submitted that the Applicant has been

diligently prosecuting the complaint and therefore the order under section 256 of the said Code could not have been passed.

3. The learned Advocate for the first and second Respondents submitted that the learned Magistrate was justified in dismissing the complaint. He submitted that on 25th October 2004 the Applicant and his Advocate were absent and therefore the complaint was specifically fixed for orders on 25th November 2004. He submitted that the learned Judge was justified in dismissing the complaint on 25th November 2004.

4. I have perused the Roznama of the proceeding. The Roznama of the proceedings indicates that on more than three occasions non bailable warrant was required to be issued against the accused persons. The complaint was fixed in the year 2004 on 19th January 2004, 20th February 2004, 10th March 2004, 8th April 2004, 7th May 2004, 6th July 2004, 31st July 2004, 31st August 2004, 10th September 2004, 11th October 2004, 25th October 2004 and 25th November 2004. I find that except on 10th September 2004 and 25th October 2004, the Applicant was present. On the contrary, Respondent nos.1 and 2 appear to have remained absent on few dates. In my view, the learned Trial Judge ought to have given one more opportunity to the Applicant to remain present and to prosecute the complaint. Perusal of the Roznama of the case right from the year 1999 shows that the Applicant has been diligently prosecuting the case. Hence, the impugned order deserves to be quashed and

set aside.

5. Hence, I pass the following order :

i) Impugned order dated 25th November 2004 is quashed and set aside.

ii) Criminal Case S.C.C. No.1120 of 1998 is restored to the file of the learned Chief Judicial Magistrate, Sangli.

iii) The parties are directed to appear before the learned Chief Judicial Magistrate, Sangli on 4th December 2006 at 11.00 a.m.

iv) All contentions of the parties on merits of the pending complaint are kept open.

v) Writ of this Order to be sent forthwith.

. Appeal is accordingly allowed.

JUDGE